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HOUSE BILL 23

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO ENVIRONMENT; PROVIDING PENALTIES AND REMEDIES FOR
FAILURE TO OBEY COMPLIANCE ORDERS; AUTHORIZING ENFORCEMENT
ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-12 NMSA 1978 (being Laws 1992,
Chapter 20, Section 14, as amended) is amended to read:

"74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD
CITATIONS.--

A. When, on the basis of any information, the
secretary or the director determines that a person has violated
or is violating a requirement or prohibition of the Air Quality
Control Act, a regulation promulgated pursuant to that act or a
condition of a permit issued under that act, the secretary or
the director may:

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1 (1) issue a compliance order within one year
2 after the violation becomes known by the department or the
3 local agency stating with reasonable specificity the nature of
4 the violation and requiring compliance immediately or within a
5 specified time period or assessing a civil penalty for a past
6 or current violation, or both; or

7 (2) commence a civil action in district court
8 for appropriate relief, including a temporary or permanent
9 injunction.

10 B. An order issued pursuant to Subsection A of this
11 section may include a suspension or revocation of [~~any~~] the
12 permit or portion thereof issued by the secretary or the
13 director that is alleged to have been violated. Any penalty
14 assessed in the order shall not exceed fifteen thousand dollars
15 (\$15,000) per day of noncompliance for each violation.

16 C. An order issued pursuant to Subsection A of this
17 section shall become final unless, no later than thirty days
18 after the order is served, the person named therein submits a
19 written request to the secretary or the director for a public
20 hearing. Upon such request, the secretary or the director
21 shall promptly conduct a public hearing. The secretary or the
22 director shall appoint an independent hearing officer to
23 preside over the public hearing. The hearing officer shall
24 make and preserve a complete record of the proceedings and
25 forward [~~his~~] the hearing officer's recommendation based

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1 thereon to the secretary or the director, who shall make the
2 final decision.

3 D. The environmental improvement board or the local
4 board may implement a field citation program through
5 regulations establishing appropriate minor violations for which
6 field citations assessing civil penalties not to exceed one
7 thousand dollars (\$1,000) per day of violation may be issued by
8 officers or employees of the department or the local agency as
9 designated by the secretary or the director.

10 E. A person to whom a field citation is issued
11 pursuant to Subsection D of this section may, within a
12 reasonable time as prescribed by regulation by the
13 environmental improvement board or the local board, elect to
14 pay the penalty assessment or to request a hearing by the
15 issuing agency on the field citation. If a request for hearing
16 is not made within the time specified in the regulation, the
17 penalty assessment in the field citation shall be final.

18 F. Payment of a civil penalty required by a field
19 citation issued pursuant to Subsection D of this section shall
20 not be a defense to further enforcement by the department or
21 the local agency to correct a violation or to assess the
22 maximum statutory penalty pursuant to other authorities in the
23 Air Quality Control Act if the violation continues.

24 G. In determining the amount of a penalty to be
25 assessed pursuant to this section, the secretary, the director

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1 or the person issuing a field citation shall take into account
2 the seriousness of the violation, any good-faith efforts to
3 comply with the applicable requirements and other relevant
4 factors.

5 H. In connection with a proceeding under this
6 section, the secretary or the director may issue subpoenas for
7 the attendance and testimony of witnesses and the production of
8 relevant papers, books and documents and may adopt rules for
9 discovery procedures.

10 I. If a person fails to comply with an
11 administrative order, the secretary or director may initiate an
12 action to suspend or revoke the permit, or portion thereof,
13 alleged to have been violated or to commence a civil action in
14 district court to enforce the order, or to suspend or revoke
15 the permit, or both.

16 J. If a person fails to pay an assessment of a
17 civil penalty, the secretary or director may commence a civil
18 action in district court to collect the civil penalties
19 assessed in the order.

20 [~~F.~~] K. Penalties collected pursuant to [~~an~~
21 ~~administrative order or a field citation~~] this section shall be
22 deposited in the:

23 (1) municipal or county general fund, as
24 applicable, if the administrative order or field citation was
25 directed to a source located within a local authority; or

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1 (2) state general fund if the administrative
2 order or field citation was directed to any other source."

3 Section 2. Section 74-2-12.1 NMSA 1978 (being Laws 1992,
4 Chapter 20, Section 15, as amended) is amended to read:

5 "74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT
6 OR LOCAL AUTHORITY--LIMITATION OF ACTIONS.--

7 A. A person who violates a provision of the Air
8 Quality Control Act or a regulation, permit condition or
9 emergency order adopted or issued pursuant to that act may be
10 assessed a civil penalty not to exceed fifteen thousand dollars
11 (\$15,000) for each day during any portion of which a violation
12 occurs.

13 B. A person who fails to comply with an
14 administrative order issued pursuant to Section 74-2-12 NMSA
15 1978 may be assessed a civil penalty of not more than twenty-
16 five thousand dollars (\$25,000) for each day of noncompliance
17 with the order.

18 [~~B.~~] C. In an action to enforce the provisions of
19 the Air Quality Control Act or an ordinance, regulation, permit
20 condition or [~~emergency~~] order, adopted, imposed or issued
21 pursuant to that act:

22 (1) the department shall be represented by the
23 attorney general;

24 (2) a local authority that is a municipality
25 shall be represented by the attorney of the municipality; and

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(3) a local authority that is a county shall be represented by the district attorney within whose judicial district the county lies.

~~[G.]~~ D. No action for civil penalty shall be commenced more than five years from the date the violation was known by the department or the local agency."